United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	James B. Moran	Sitting Judge if Other than Assigned Judge		
CASE NUMBER	96 C 1122	DATE	11/9/2001	
CASE TITLE	Builders Ass	Builders Association etc. Vs. City of Chicago		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

MO	TION:	01				
Memorandum Opinion and Order						
DOCKET ENTRY:						
(1)	□ Fi	led motion of [use listir	ng in "Motion" box above.]			
(2)	□ Br	rief in support of motion	support of motion due			
(3)	□ Aı	nswer brief to motion du	e Reply to answer brief due	<u>.</u> .		
(4)	□ Ri	ıling/Hearing on	set forat			
(5)	□ Sta	atus hearing[held/contin	ued to] [set for/re-set for] on set for	at		
(6)	□ Pr	etrial conference[held/c	ontinued to] [set for/re-set for] on se	et for at	_•	
(7)	□ Tr	Trial[set for/re-set for] on at				
(8)	□ [B	[Bench/Jury trial] [Hearing] held/continued to at				
(9)		This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] ☐ FRCP4(m) ☐ General Rule 21 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).				
 [Other docket entry] Enter Memorandum Opinion and Order. The City objects to the quashing of approximately 500 subpoenas. ECA wants attorneys' fees arising from its successful efforts to resist the subpoenas. Both objections are overruled. Status hearing set for November 27, 2001 at 9:45am. 						
	No notices requir	ed, advised in open court.			Document Number	
	No notices required.			number of notices		
	Notices mailed by judge's staff.			NOV 0 9 2001		
Notified counsel by telephone. Docketing to mail notices.			(D)	date docketed		
	Mail AO 450 form.			docketing deputy initials		
Copy to judge/magistrate judge.		gistrate judge.	TO FUR DOCKETING	V		
		courtroom	01 MOV -9 AM 6: 20	date mailed notice		
	WAH	deputy's initials				
			Date/time received in central Clerk's Office	mailing deputy initials	·	

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

BUILDERS ASSOCIATION OF GREATER CHICAGO,))	NOV CA
Plaintiff,)	9-7/
vs.) No. 96 C 1122	
CITY OF CHICAGO, a municipal corporation,)))	
Defendants.)	

MEMORANDUM OPINION AND ORDER

Defendant City of Chicago and subpoenaed Electrical Contractors Association (ECA) of the City of Chicago both object to the August 29, 2001, Memorandum Opinion and Order of Magistrate Judge Geraldine Brown, although for entirely different reasons. The City objects to the quashing of approximately 500 subpoenas. ECA wants attorneys' fees arising from its successful efforts to resist the subpoenas. Both objections are overruled.

In a thorough opinion Magistrate Judge Brown explained why she believed that the subpoenas should be quashed. We overturn that conclusion only if it is clearly erroneous or contrary to law. And the ruling is clearly erroneous only if we are left with the definite and firm conviction that a mistake has been made. We are not at all convinced.

The City contends that it had to turn to third party subpoenas because the plaintiff Builders Association of Greater Chicago (BAGC) was less than forthcoming in discovery; that it needs the information to construct a statistical model demonstrating past discrimination; that post-enactment evidence is admissible to buttress pre-enactment evidence and to test plaintiff's allegations, particularly when the requested relief is injunctive; and that it has offered to scale back significantly the scope of the subpoenas.

No. 96 C 1122

The central issue here is whether the City had discriminated against minority contractors or had stood passively by when it knew that contractors were discriminating against minority contractors on public construction jobs, thus justifying the adoption of an affirmative action program in April 1985, and then amended in 1990. The City claims that it is enough that it had a strong basis in evidence then to justify the program, and that it can introduce later acquired evidence to bolster that earlier conclusion. That may well be so, and Magistrate Judge Brown assumed that to be so. She also dealt directly with the proposed scaling back of the scope of the subpoenas.

But the subpoenas, even scaled back, go far beyond that issue. Even as modified, they seek a host of documents from 1978 to the present, including all documents relating to private sector projects. Magistrate Judge Brown recognized that the burden of production was great indeed; she believed that much of the resulting mass of raw data would be, at best, of questionable relevance; and she questioned whether even a subset of the data would be useful in constructing a meaningful statistical model. We think she had ample reasons for concluding that the subpoenas imposed an undue burden. The issue here is not whether there has been or is discrimination in the construction industry; it is whether the City was justified in requiring a set-aside program for public projects in 1985 and 1990. We conclude that Magistrate Judge Brown was well within her discretion in quashing the subpoenas.

We overrule the objection of ECA because it has nothing to object about. Magistrate

Judge Brown has not yet ruled on its application. Accordingly, the appeal is premature.

JAMES B. MORAN

Senior Judge, U. S. District Court

Nov 9, 2001.